In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1191

WOODROW WILSON COMPTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 17–22) is reported at 355 F. 2d 872.

JURISDICTION

The judgment of the court of appeals was entered on February 4, 1966, and a petition for rehearing was denied on March 10, 1966. The petition for a writ of certiorari was filed on April 6, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether interstate travel with intent to promote and establish an illegal gambling enterprise is punishable under 18 U.S.C. 1952 when the travel consists of moving one's residence to a different State in order to operate a previously chosen establishment.

216-496—66

STATUTE INVOLVED

18 U.S.C. 1952 (75 Stat. 498) provides in pertinent part:

> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
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> (1) distribute the proceeds of any unlawful activity; or
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> (2) commit any crime of violence to further any unlawful activity; or
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> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling * * * offenses in violation of the laws of the State in which they are committed or of the United States. * * *

STATEMENT

After a jury trial in the United States District Court for the Western District of Tennessee, petitioner was convicted of traveling in interstate commerce with intent to establish an illegal gambling

enterprise, in violation of 18 U.S.C. 1952.[1] He was fined five thousand dollars and sentenced to a five-year term of imprisonment (App. 7a).[2]

The evidence shows that from 1953 to May 26, 1962, petitioner ran a large-scale dice game at his home in West Memphis, Arkansas (App. 84a, 85a; G. 1b, 2b). On the latter date, his gambling room was raided by the West Memphis police (App. 85a-86a), resulting in a great deal of newspaper publicity which—according to petitioner—embarrassed his family. Petitioner testified that he then considered leaving West Memphis (App. 86a, 87a, 108a), and that during the summer of 1962 he visited gambling establishments in Tipton County, Tennessee[3] (App. 116a). Since, however, an acquaintance of his had been prosecuted in a federal court for interstate activities relating to gambling (App. 114a), petitioner, before moving, consulted his attorney, who advised him that a *bona fide* change of residence, unconnected with any overt act of gambling, would not violate federal law (App. 138a, 139a).

In August or early September 1962, a long-time gambling associate and friend of petitioner (one Nix) began to negotiate for the purchase of a farm located

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[1] Petitioner was charged on two other counts involving inducing others to travel in interstate commerce for gambling purposes. One count was dismissed on the government's motion, and petitioner was acquitted on the other.

[2] "App." refers to petitioner's appendix in the court of appeals and "G." to the government's appendix in that court. Both are on file with the Clerk of this Court.

[3] Tipton County is adjacent to Shelby County, which includes Memphis, Tennessee.

about 300 yards from a gambling establishment in Tipton County which petitioner had visited (G. 4b, 5b). Nix purchased the farm and a six-room dwelling house on September 11, 1962, for $27,000 (G. 5b); the attorney who handled the transaction testified that he was introduced to a "Mr. Compton" at the closing (App. 43a). Nix began to renovate the farmhouse, and, on October 4, 1962, after a view of the property and a single day's negotiations, petitioner purchased it from Nix for the same price Nix had paid (App. 40a, 134a, 136a; G. Ex. 12). Further renovated, this farmhouse became the Twin Oaks Club, which, petitioner testified, he, Nix and other partners operated as a gambling-house (App. 130a); public gambling commenced in early December 1962 (App. 103a, 130a).

Petitioner and his wife testified that the entire family moved from West Memphis, Arkansas, to Memphis, Tennessee, on October 2, 1962 (App. 84a, 90a, 163a, 167a); utility companies' records verified this date (App. 11a, 16a, 30a, 160a). It was this travel that formed the basis of petitioner's conviction.[4]

[4] To be sure, the indictment charges interstate travel only on December 12, 1962. Although there was testimony that petitioner returned to West Memphis on that day with movers to pick up some furniture that had been left in his former residence (App. 54a–59a), the case was tried and the appeal argued by all parties on the basis that the October 2 trip was the one at issue. There was no objection at trial (or on appeal) predicated on the differing dates. Nor does petitioner raise the point in this Court. Since both petitioner and the government assumed that the date in the indictment was October 2, 1962, there cannot have been any prejudice to petitioner as a result of the variance.

ARGUMENT

1. Petitioner argues that interstate travel for the purpose of changing one's domicile cannot be the basis for a conviction under 18 U.S.C. 1952 (which, among other things, punishes interstate travel with intent to establish an illegal gambling enterprise), even if the establishment of such an enterprise is, as he concedes was the case here, also contemplated (Pet. 5, 10–14). However this may be, the evidence in the present case shows far more—that petitioner first decided to move his gambling business and only then, because of that decision, moved his family; so, at least, the jury could find. This is thus not a case where a gambler changes the State of his domicile for other reasons, and, incidentally, moves his gambling business as well. It was only after petitioner's admitted gambling partner had purchased and begun to remodel the property for use as a gambling casino that petitioner moved his family. Considering the advice that petitioner had obtained from his attorney, and the fact that immediately after the move the partner transferred the property to petitioner, the jury was entitled to conclude that petitioner—who was apparently present at the closing—was the real party in interest when the Tennessee property was purchased in September, and that, therefore, petitioner's dominant intent in moving to Tennessee was to continue his gambling activity rather than to change his abode (see Pet. App. 21–22).

The statute only reaches interstate travel with intent to establish unlawful gambling, but it does not require that the unlawful enterprise be the only purpose of the travel. The rule that the illegal purpose need be only one of the purposes of the proscribed travel is well established in Mann Act cases,[5] and it is, we submit, equally applicable here.[6]

2. Petitioner argues that the decision below is in conflict with *United States* v. *Hawthorne*, 356 F. 2d 740 (C.A. 4) (Pet. App. 23–26). The court in that case (while not strictly required to reach the issue because it affirmed the conviction on another count on which a concurrent sentence had been imposed) held that interstate travel by the operator of a gambling establishment when he moved his family was not within the statute because the purpose of the trip was "not sufficiently related to his gambling enterprise to bring it within the interdiction of the statute" (Pet. App. 25). There, however, the trip came only after petitioner, through a corporation, had leased the property to which he

[5] See, *e. g.*, *Daigle* v. *United States*, 181 F. 2d 311, 314 (C.A. 1); *Dingess* v. *United States*, 315 F. 2d 238, 240 (C.A. 4), petition for certiorari dismissed, 373 U.S. 947; *Dunn* v. *United States*, 318 F. 2d 89, 92 (C.A. 5); *Reamer* v. *United States*, 318 F. 2d 43, 49 (C.A. 8), certiorari denied, 375 U.S. 869; *DeVault* v. *United States*, 338 F. 2d 170 (C.A. 10).

[6] This case cannot be likened to *Mortensen* v. *United States*, 322 U.S. 369, where the defendants, who ran a house of prostitution, took a vacation trip with some of the women who worked for them and the only transportation charged in the indictment was the return part of the vacation trip. If the defendants there had moved their entire operation to another State, they clearly would have violated the Mann Act.

moved and on which he later established his gambling enterprise, and had made other trips to the property. The court of appeals agreed that the other trips, which Hawthorne had taken "prior to that charged in count one of the indictment were directly related to his enterprise, but the connection with this specific trip is too tenuous" (Pet. App. 26).

The trip here, in contrast, though it, too, involved moving the family, was comparable to the "other trips" to which the *Hawthorne* court referred; it was "directly related" to the gambling enterprise. The evidence shows that, immediately after having made the move on October 2, 1962, petitioner, on October 4, took open title to the property that he had previously taken in the name of a nominee. The October 2 trip was thus critical to the establishment of the unlawful gambling activity. Since petitioner was traveling from Arkansas to Tennessee for reasons of gambling, he was properly found to have violated 18 U.S.C. 1952.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
DONALD I. BIERMAN,
Attorneys.

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